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**OFFICE OF PETITIONS**

In re Application of :  
Miller et al. :  
Application No. 10/766,438 : ON PETITION  
Filed: January 27, 2004 :  
Attorney Docket No. MS1-332USC1 :  
:

This is a decision on the petition filed May 11, 2005, requesting that the above-identified application be accorded a filing date of January 27, 2004, rather than the presently accorded date of January 21, 2004. The petition is properly treated as a petition under 37 CFR 1.10(d).

Applicant requests the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on January 27, 2004 pursuant to 37 CFR 1.10. In support, applicant has submitted a copy of Express Mail label No. EV 395542210 US, showing an incorrect handwritten "date-in" of "January 21, 2003" as well as a "January 27, 2004" Denver, CO Post Office receipt stamp. Additionally, the same Express Mail receipt number appears on the original "Patent Application Transmittal Letter."

To further substantiate applicant's allegation that the application papers for this file were deposited on the requested filing date, an independent search was made of the USPS Express Mail Track and Confirm records which resulted in a finding that the package in question was in fact accepted on January 27, 2004 at 3:50 p.m. at the Denver, CO USPS.

Therefore, in view of all the evidence, it is concluded that the application was deposited in Express Mail service on January 27, 2004. Accordingly, the instant application is entitled to a filing date of January 27, 2004, and has been so accorded.

The petition is **GRANTED**.

A petition under 37 CFR 1.10(d) does not require a petition fee and none has been collected.

This matter is being referred to the Office of Initial Patent Examination Division for further **processing with a filing date of January 27, 2004, along with a corrected filing receipt**. Thereafter, the matter will be referred to Technology Center 2100 for examination in due course.

Telephone inquiries concerning this matter may be directed Paralegal Liana Chase at (571) 272-3206.

*Frances Hicks*  
Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
For Patent Examination Policy